

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DANNY VARNER §
v. § CIVIL ACTION NO. 6:13cv636
MAXEY CERLIANO, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Danny Varner, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Gregg County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report on April 17, 2014, recommending that the lawsuit be dismissed. Varner did not file objections to this Report; instead, on May 2, 2014, he filed a motion asking that his lawsuit be dismissed without prejudice. The Defendants have filed a response asking that the Magistrate Judge's Report be adopted or that the lawsuit otherwise be dismissed with prejudice.

Fed. R. Civ. P. 41(a)(2) provides that in cases where the defendants have answered or sought summary judgment, an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper.

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that the Magistrate Judge did not err in determining that Varner's claims are frivolous. Nonetheless, in light of the Plaintiff's *pro se* status, the Court has concluded that the Plaintiff's request for a dismissal of his lawsuit without prejudice should be granted. It is accordingly

ORDERED that the Plaintiff Danny Varner's motion to dismiss (docket no. 71) is hereby **GRANTED**. It is further

ORDERED that the above-styled civil action be and hereby is **DISMISSED WITHOUT PREJUDICE** on the motion of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 22nd day of May, 2014.



Michael H. Schneider
MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE